

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 TERESA H.,

10 Plaintiff,

CASE NO. C18-5711-MAT

11 v.

ORDER RE: SOCIAL SECURITY
DISABILITY APPEAL

12 ANDREW M. SAUL,
Commissioner of Social Security,¹

13 Defendant.

14 Plaintiff proceeds through counsel in her appeal of a final decision of the Commissioner of
15 the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's
16 application for Disability Insurance Benefits (DIB) after a hearing before an Administrative Law
17 Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all
18 memoranda of record, this matter is AFFIRMED.

19 ///

20 ///

21 ///

22 _____
23 ¹ Andrew M. Saul is now the Commissioner of the Social Security Administration. Pursuant to Federal Rule
of Civil Procedure 25(d), Andrew M. Saul is substituted for Nancy A. Berryhill as defendant in this suit.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3

On April 4, 2017, ALJ David Johnson held a hearing, taking testimony from Plaintiff and a vocational expert. (AR 62-110.) On July 21, 2017, the ALJ issued a decision finding Plaintiff not disabled. (AR 26-52.) Plaintiff timely appealed. The Appeals Council denied Plaintiff's request for review on July 2, 2018 (AR 1-7), making the ALJ's decision the final decision of the Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

The Commissioner follows a five-step sequential evaluation process for determining whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff did not engage in substantial gainful activity during the period between her alleged onset date (April 2, 2009) and her date last insured (DLI) (June 30, 2013). (AR 28.) At step two, it must be determined whether a claimant suffers from a severe impairment. The ALJ found that through the DLI, Plaintiff's

²Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

1 cervical sprain, spinal abnormalities, radiculitis, right shoulder sprain, degenerative joint disease,
2 thoracolumbar sprain, radiculopathy, lupus, fibromyalgia, emphysema/chronic obstructive
3 pulmonary disease, interstitial lung disease, Raynaud's phenomenon, and bursitis were severe.
4 (AR 28-30.) Step three asks whether a claimant's impairments meet or equal a listed impairment.
5 The ALJ found that Plaintiff's impairments did not meet or equal the criteria of a listed impairment.
6 (AR 30-33.)

7 If a claimant's impairments do not meet or equal a listing, the Commissioner must assess
8 residual functional capacity (RFC) and determine at step four whether the claimant has
9 demonstrated an inability to perform past relevant work. The ALJ found that through the DLI,
10 Plaintiff was capable of performing light work with additional limitations: she could occasionally
11 stoop, kneel, crouch, crawl, and climb ladders, ropes, or scaffolds. She could frequently climb
12 ramps or stairs. She could occasionally reach overhead with her right arm. She could not have
13 concentrated exposure to extreme cold, pulmonary irritants, or hazards. (AR 33.) With that
14 assessment, the ALJ found Plaintiff able to perform past relevant work as an auto driver, packing
15 and shipping clerk, cashier II, sales clerk, and social service aide. (AR 49-50.)

16 If a claimant demonstrates an inability to perform past relevant work, the burden shifts to
17 the Commissioner to demonstrate at step five that the claimant retains the capacity to make an
18 adjustment to work that exists in significant levels in the national economy. The ALJ proceeded
19 to step five in the alternative, finding that Plaintiff could perform other representative jobs such as
20 storage facility rental clerk, small product assembler, mail clerk, semiconductor bonder, and
21 document preparer. (AR 51-52.)

22 This Court's review of the ALJ's decision is limited to whether the decision is in
23 accordance with the law and the findings supported by substantial evidence in the record as a

1 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means more
2 than a scintilla, but less than a preponderance; it means such relevant evidence as a reasonable
3 mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881 F.2d 747, 750
4 (9th Cir. 1989). If there is more than one rational interpretation, one of which supports the ALJ's
5 decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir.
6 2002).

7 Plaintiff argues the ALJ erred in (1) excluding mental health conditions at step two; (2)
8 assessing certain medical opinions; and (3) assessing her RFC.³ The Commissioner argues that
9 the ALJ's decision is supported by substantial evidence and should be affirmed.

10 Step two

11 At step two, a claimant must make a threshold showing that her medically determinable
12 impairments significantly limit her ability to perform basic work activities. *See Bowen v. Yuckert*,
13 482 U.S. 137, 145 (1987); 20 C.F.R. §§ 404.1520(c), 416.920(c). A medically determinable
14 impairment results from anatomical, physiological, or psychological abnormalities that can be
15 shown by medically acceptable clinical and laboratory diagnostic techniques, and established by
16 medical evidence consisting of signs, symptoms, and laboratory findings, not only by a statement
17 of symptoms. 20 C.F.R. § 404.1521. "Basic work activities" refers to "the abilities and aptitudes
18 necessary to do most jobs." 20 C.F.R. §§ 404.1522(b), 416.922(b). "An impairment or
19 combination of impairments can be found 'not severe' only if the evidence establishes a slight
20 abnormality that has 'no more than a minimal effect on an individual's ability to work.'" *Smolen*

22 ³ Plaintiff's opening brief also challenges the ALJ's step-four findings and the sufficiency of the
23 evidence, but in doing so either only reiterates arguments made elsewhere or fails to identify an error with
specificity. Dkt. 12 at 15-16. Accordingly, these issues will not be analyzed separately.

1 v. *Chater*, 80 F.3d 1273, 1290 (9th Cir. 1996) (quoting Social Security Ruling 85-28). “[T]he step
2 two inquiry is a de minimis screening device to dispose of groundless claims.” *Id.* (citing *Bowen*,
3 482 U.S. at 153-54). An ALJ is also required to consider the “combined effect” of an individual’s
4 impairments in considering severity. *Id.* A diagnosis alone is not sufficient to establish a severe
5 impairment. Instead, a claimant must show his medically determinable impairments are severe.
6 20 C.F.R. §§ 404.1521, 416.921.

7 In this case, the ALJ found that Plaintiff’s post-traumatic stress disorder (PTSD) had not
8 been diagnosed by an acceptable medical source, and thus was not medically determinable. (AR
9 29.) The ALJ also found that Plaintiff’s anxiety and depression were medically determinable, but
10 not severe because they did not cause limitations that were any more than mild. (AR 29-30.)
11 Plaintiff argues that the ALJ erred in excluding PTSD, depression, and anxiety at step two. Dkt.
12 12 at 5-10.

13 As to PTSD, Plaintiff notes that the ALJ emphasized that this condition was not diagnosed
14 by an acceptable medical source. Dkt. 12 at 5. Plaintiff does not dispute this finding or explain
15 how this finding was erroneous. Accordingly, the Court finds that the ALJ properly excluded
16 PTSD at step two. *See* 20 C.F.R. § 404.1521 (“Therefore, a physical or mental impairment must
17 be established by objective medical evidence from an acceptable medical source.”).

18 Likewise, the remainder of Plaintiff’s brief on the step-two allegations do not show error
19 in the ALJ’s decision. Plaintiff points to several parts of the record, none of which establish that
20 her mental conditions caused functional limitations prior to the DLI more severe than found by the
21 ALJ: in fact, they do not identify any particular functional limitations at all. Dkt. 12 at 5-10 (citing
22 AR 834, 1083-92, 2258-62). The ALJ entered detailed findings regarding Plaintiff’s functioning
23 in the four “paragraph B” domains, and Plaintiff has not shown that any of those findings are

1 erroneous. (AR 29-30.) Plaintiff urges this Court to interpret the mental examinations to support
2 her contentions, but this Court will not re-weigh the evidence. Because Plaintiff has failed to meet
3 her burden to show error in the ALJ's step-two findings, this portion of the ALJ's decision is
4 affirmed.

5 Medical evidence

6 Plaintiff alleges that the ALJ erred in assessing the medical evidence pertaining to her
7 physical and mental conditions, and the Court will consider each argument in turn.

8 Legal standards

9 In general, more weight should be given to the opinion of a treating physician than to a
10 non-treating physician, and more weight to the opinion of an examining physician than to a non-
11 examining physician. *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1996). Where not contradicted
12 by another physician, a treating or examining physician's opinion may be rejected only for "clear
13 and convincing" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)).
14 Where contradicted, a treating or examining physician's opinion may not be rejected without
15 "specific and legitimate reasons" supported by substantial evidence in the record for so doing."
16 *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ may reject
17 physicians' opinions "by setting out a detailed and thorough summary of the facts and conflicting
18 clinical evidence, stating his interpretation thereof, and making findings." *Reddick v. Chater*, 157
19 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes*, 881 F.2d at 751). Rather than merely stating
20 her conclusions, the ALJ "must set forth [her] own interpretations and explain why they, rather
21 than the doctors', are correct." *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir. 1988)).

22 Physical impairments

23 Plaintiff notes that the ALJ focused on the paucity of abnormal objective findings in the

1 medical evidence. Dkt. 12 at 10-11 (referencing AR 35-45, 47-49). Plaintiff points to certain
2 objective findings (Dkt. 12 at 11 (citing AR 574, 575, 581, 582, 596, 616)), but fails to
3 acknowledge that the ALJ mentioned those findings as well, and that he found that those abnormal
4 findings were minimal in the context of the record, and were undermined by Plaintiff's inconsistent
5 responses upon examination. (AR 35-37.) Although Plaintiff interprets the evidence differently,
6 she has not shown that the ALJ's assessment was unreasonable and has therefore failed to establish
7 error in the ALJ's decision. *See Morgan v. Comm'r of Social Sec. Admin.*, 169 F.3d 595, 599 (9th
8 Cir. 1999) ("Where the evidence is susceptible to more than one rational interpretation, it is the
9 ALJ's conclusion that must be upheld.").

10 Plaintiff's brief next addresses a few of the many medical opinions in this record. Dkt. 12
11 at 11-13. Plaintiff's alternate interpretation of these opinions does not establish error in the ALJ's
12 assessment of these opinions. Although Plaintiff notes that some of the discounted opinions
13 mention objective findings, the ALJ acknowledged those objective findings and found them to be
14 minimal and contradicted by other examination results. (AR 35-37.) Plaintiff also emphasizes
15 that her treating chiropractor cited objective findings, but does not acknowledge that the ALJ cited
16 objective findings inconsistent with the chiropractor's findings, which is a specific, legitimate
17 reason to discount the chiropractor's opinion. *Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th Cir.
18 2008) (inconsistency with the record properly considered by ALJ in rejection of physician's
19 opinions). Furthermore, the ALJ did not err in noting the chiropractor's status as a non-acceptable
20 medical source. *See Turner v. Comm'r of Social Sec. Admin.*, 613 F.3d 1217, 1223-24 (9th Cir.
21 2010); *Hubble v. Astrue*, 467 Fed. Appx. 675, 676-77 (9th Cir. Jan. 30, 2012) ("The ALJ is entitled
22 to give greater weight to opinions from 'acceptable medical sources' . . .). That the ALJ credited
23 other opinions that were signed by chiropractors working in concert with physicians does not

1 create an internal inconsistency with the ALJ's finding that opinions authored by a chiropractor
2 alone were entitled to less weight. (See AR 39-40, 41-42.)

3 Lupus & fibromyalgia

4 Plaintiff argues that the ALJ's decision fails to account for limitations caused by her lupus
5 and fibromyalgia. Dkt. 12 at 13. Plaintiff states that "the possibility exists that [she] exhibited
6 symptoms for years prior to her formal [lupus and fibromyalgia] diagnoses" in early 2013. *Id.*
7 This contention fails to identify any evidence in the record indicating that Plaintiff actually had
8 any limitations caused by these conditions prior to the DLI that were not accounted for in the RFC
9 assessment; raising the mere "possibility" that she had more severe limitations does not show that
10 the ALJ erred. See *Valentine v. Comm'r of Social Sec. Admin.*, 574 F.3d 685, 692 n.2 (9th Cir.
11 2009) ("Valentine does not detail what other physical limitations follow from the evidence of his
12 knee and shoulder injuries, besides the limitations already listed in the RFC. We reject any
13 invitation to find that the ALJ failed to account for Valentine's injuries in some unspecified way.").
14 Plaintiff has not met her burden to show that the ALJ improperly excluded limitations caused by
15 lupus or fibromyalgia.

16 Mental impairments

17 Plaintiff reiterates arguments made with respect to step two to contend that she had mental
18 limitations that should have been included in the RFC assessment. Dkt. 12 at 14. Plaintiff does
19 not point to any evidence outlining any functional limitations, however. *Id.* Therefore, Plaintiff
20 has not shown that the ALJ erred in failing to include mental limitations in the RFC assessment.

21 ///

22 ///

23 ///

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23

DATED this 18th day of June, 2019.

Mary Alice Theiler
United States Magistrate Judge